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## Washington Post

[https://www.washingtonpost.com/national/health-science/at-superfund-sites-scott-pruitt-could-flip-his-industry-friendly-script/2018/01/23/070c07d4-f659-11e7-a9e3-ab18ce41436a\\_story.html?utm\\_term=.673143bd168e](https://www.washingtonpost.com/national/health-science/at-superfund-sites-scott-pruitt-could-flip-his-industry-friendly-script/2018/01/23/070c07d4-f659-11e7-a9e3-ab18ce41436a_story.html?utm_term=.673143bd168e)

### At Superfund sites, Scott Pruitt could flip his industry-friendly script

By Brady Dennis and Juliet Eilperin, 1/23/18, 11:00 AM

Not long after Hurricane Harvey battered Houston last summer, Environmental Protection Agency Administrator Scott Pruitt stood on the banks of the San Jacinto River and surveyed a decades-old toxic waste site as divers checked whether the storm had unearthed dangerous chemicals.

Days later, he ordered two corporations to spend \$115 million to excavate the contamination rather than leaving it covered. His dramatic decision put Pruitt in unfamiliar territory: Environmental activists cheered, while the targeted firms protested that the directive was not backed by science and could expose more people to health risks.

Pruitt's approach to the San Jacinto River Waste Pits, as well as to several other Superfund sites around the country, stands in stark contrast to the industry-friendly moves on everything from pesticide exposure to power plant pollution that have defined his first year at EPA.

In pressing for aggressive, accelerated cleanups, he is butting heads with companies while siding at times with local environmental groups. His supporters, and Pruitt himself, say it is evidence he is reinvigorating a core function of the agency. His critics see it as a political move, an effort to protect himself against charges that he constantly favors corporate interests.

Yet Pruitt's attention is shifting the conversation in some beleaguered communities. Residents say they don't care what his motivations are — if those bring the results they've long sought.

"Scott Pruitt is probably the most important person right now in the lives of the people in this community," said Dawn Chapman, who lives with her husband and three children near a controversial site northwest of St. Louis.

The landfill there, known as West Lake, contains thousands of tons of radioactive waste from the World War II-era Manhattan Project. Chapman and other activists are pushing for significant excavation. Pruitt has promised them he will issue a decision within days.

There are signs he might seek more extensive — and expensive — removal than EPA staff have recommended in the past. As is the case in Texas, the companies on the hook for the cleanup contend that years of scientific evidence show capping the waste in place would be safer, cheaper and completed sooner.

"Depending on the decision [Pruitt] makes," Chapman said, "he will probably forever remain the hero or the villain in the eyes of this community."

If he continues to propose aggressive actions around the country — his office last month published a list of 21 places in need of "immediate and intense attention" — it would represent one of the rare areas in which he has pushed to apply a cautionary approach when calculating the risk of exposure to environmental hazards.

Individuals familiar with the process, who spoke on the condition of anonymity to discuss internal deliberations, say Pruitt has asked agency staff briefing him on proposals at certain sites to flesh out more extensive remedies.

"In the briefings I've been in, he has set pretty high expectations for getting work done quickly . . . The region will lay out a schedule. And he'll say, 'Can you do it sooner than that? Can you do it faster?'" said Jim Woolford, director of an EPA office that helps run the Superfund program. "It elevates the attention and the work that goes into making those decisions happen faster."

In short, Woolford added, "What gets watched is what gets done."

Peter deFur, who has consulted on Superfund for more than two decades, remains skeptical of the administrator's emphasis on speed.

"The whole thing just raises a big red flag to me," deFur said. While acknowledging past EPA leaders have let some sites languish,

he worries rushing to get locations off the program's National Priorities List could mean inadequate cleanups and expose communities to long-term harm.

Mathy Stanislaus, who oversaw the Superfund program during the Obama years, is wary of Pruitt's public posture. "Selecting a few remedies that are more expensive allows him to claim that he is protecting the environment," he said. "Politically, it's a counter against 'I'm just listening to industry.'"

With the San Jacinto site, one of the companies involved has questioned why Pruitt announced a final plan before all data on the hurricane's impact was in. "Removing the existing protective cap, which successfully withstood Hurricane Harvey, could result in significant damage to public health and the local environment," a spokesman for International Paper said in a statement. The other company that is liable is McGinnis Industrial Maintenance Corp.

Pruitt gave no ground in a recent interview with The Washington Post. "The [companies] are already barking about it, but they caused it," he said. "We're going to hold them accountable."

Still, Pruitt appears willing to alter Superfund plans to ease the burden on some firms. He is revisiting a decision EPA finalized just before Barack Obama left office to clean up Portland Harbor in Oregon, which is projected to cost more than \$1 billion and take 13 years to complete.

During his first year in office, Pruitt has consistently listed the Superfund program as one of his top priorities, even as he has trimmed agency staff and rolled back a slew of other environmental regulations — and even as the Trump administration has proposed cutting the program's annual budget by 30 percent, or about \$330 million.

At many contaminated sites Pruitt has singled out for attention, the EPA can legally force companies responsible for the pollution to pay for cleanups. At "orphan" sites, where the polluters have gone bankrupt, the federal government still shoulders most of the tab. The pot of available dollars keeps shrinking.

"This is about leadership and attitude and actually making decisions on how we're going to remediate these sites," Pruitt told the Post last year. In 2018, he said he hopes to remove as many as 22 sites from the more than 1,300 that remain on that National Priorities List.

Last spring, Pruitt issued a directive saying he planned to be directly involved in decisions about cleanups in excess of \$50 million. He also established a Superfund task force to examine how to restructure the program in ways that favor "expeditious remediation," "reduce the burden" on firms responsible for such efforts and "encourage private investment" in the projects.

So far, however, Pruitt has few concrete results to tout.

The EPA this month heralded cleanups at seven toxic waste sites and credited Pruitt's leadership for their removal from the Superfund list. An Associated Press analysis noted the physical work at each was largely completed before President Trump took office.

Such cleanups are frequently massive projects that take decades. Though every administration can shape the outcome at a site, certain legal guidelines must be followed.

Among the nine criteria the EPA has to consider: Will the proposed approach protect human health and the environment? How permanent will the solution be? Will states and communities embrace it? What are the short-term risks?

Unlike with air and water pollution rules, which do not factor cost into the equation, the agency is required to show the reduction in public health risk justifies the expense of the proposed action.

Albert "Kell" Kelly, the former Oklahoma banker whom Pruitt put in charge of revamping Superfund, said in an interview Pruitt does not want "a shortcut of a remedy" with any case. "He wants to be sure that the remedy is a sound remedy for a long, long time."

The agency is laying the groundwork to defend Pruitt's decisions in court, Kelly said, with the administrator "trying to be very judicious in what he does."

Kelly has faced questions about his qualifications for his current job, given his lack of environmental experience and his \$125,000

fine last year from the Federal Deposit Insurance Corp. The FDIC also banned him from future banking activity.

He declined to elaborate on the FDIC settlement but called it a “highly frustrating” experience “which I could go into in depth, [but] I’m not sure that it’s wise to do that.”

As for his bona fides, “I never represented that I had an environmental science degree,” Kelley noted, saying his main job on Superfund is to “bring parties together” and employ “management skills that, frankly, I’ve known for a long, long time.”

The upcoming decision on West Lake will test not only those skills but Pruitt’s promises.

Both companies now responsible for the Missouri landfill, Republic Services and Exelon Corp., have urged the EPA to avoid widespread excavation that they say could stir up and spread dangerous pollutants. They back a solution similar to a George W. Bush administration plan to cap and monitor the site, which would be several hundred million dollars cheaper. Protracted litigation is likely if the agency rejects that idea.

The local activists who have spent years arguing for tougher action believe they have greater leverage with the Trump EPA.

“I have to give them credit. The experience has been night and day different,” Chapman said. “I don’t know what decision [Pruitt] is going to make at this site. But I do know that he will be the one to make it.”

## **E&E Climatewire**

<https://www.eenews.net/climatewire/stories/1060071657/search?keyword=EPA>

### **Pruitt was headed to ultra-efficient Japanese coal plant**

By Jean Chemnick and Niina Heikkinen, 1/23/18

U.S. EPA boss Scott Pruitt last weekend was slated to visit a Japanese plant that claims to be the world's most efficient coal-fired power producer. It's also known for its good looks.

"It could be a country club, and it's a coal-fired power plant," said David Mohler, an Obama-era deputy assistant secretary for clean coal and carbon management at the Energy Department who says he shows pictures he took on a visit to the Isogo Thermal Power Station to people and challenges them to guess what it is.

"You can eat off the floor," he said. "There's no coal dust that escapes into the environment, because it's very self-contained. It's designed in a way that's meant to be aesthetically pleasing and clean from the get-go."

The plant, which is located on a peninsula in Yokohama harbor in Japan's second-largest city, has low emissions of conventional pollutants — one of its two units features an air quality control system — and achieves a 45 percent efficiency rate it estimates puts it on par with a natural gas-fired combined-cycle plant.

That compares to 40 percent efficiency at American Electric Power's John W. Turk Jr. coal plant in Arkansas, the only U.S. ultra-supercritical coal plant. The average steam-cycle efficiency of a Japanese coal plant is 40 percent compared with the U.S. fleet's 33 percent average.

It's unclear what Pruitt's aim would have been in visiting Japan or Isogo or whether the trip, which was scrapped due to the federal government shutdown, will happen at a later date. EPA spokesman Jahan Wilcox said in an email, "Due to security concerns we do not comment on Administrator Pruitt's upcoming schedule."

But the fact that the plant visit had been on Pruitt's itinerary is the latest example of President Trump's environment chief stressing support for fossil fuels abroad. His trip to Morocco last month focused on U.S. natural gas export opportunities to that country. And the Trump administration more broadly has advanced the use of "clean" fossil fuels as a solution for dealing with climate change (Climatewire, Jan. 16).

Virtually no coal-fired generation is in the construction pipeline in the United States now, mainly because gas production is booming in places like Pruitt's home state of Oklahoma, making it hard for coal to compete. But plants like Isogo's Unit 2, which

came online in 2009, could be a model for any new coal-fired generation that would come online in the United States in future years.

"It could just be an opportunity to say, 'Hey, this is where we could go,'" said Mohler.

"The overall view of the portfolio in Japan is a plant constructed there is probably going to be about as good as you are going to get in terms of emissions reductions and efficiency," echoed Jim Wood, former deputy assistant secretary for clean coal in the Office of Fossil Energy at the Department of Energy during the Obama administration and current director of the U.S.-China Clean Energy Research Center's Advanced Coal Technology Consortium at West Virginia University. "I think [Pruitt] may have interest in that."

Jane Nakano, a senior fellow in the Energy and National Security Program at the Center for Strategic and International Studies, said she suspects Pruitt would have made the trek to learn about Japan's deployment of high-efficiency, low-emissions (HELE) coal-fired power plants and possibly pull lessons about successful deployment in the United States.

The trip, she added, could also have served the secondary purpose of identifying market opportunities for U.S. coal in Asia's power sector, including Japan.

Nakano pointed to the recent October sit-down between Vice President Mike Pence and Japanese Deputy Prime Minister Taro Aso, where they announced an intention to unveil "concrete achievements" on liquefied natural gas; highly efficient coal and carbon capture, utilization and storage; nuclear energy; and infrastructure.

The following month, during a bilateral summit in Japan, President Trump and Japanese Prime Minister Shinzo Abe said they planned to work together to deploy "highly efficient, low-emissions (HELE) coal technologies, including [carbon capture, use and storage]," along with developing a global market for natural gas, according to a November press release from the Japanese government.

### **Japan's post-Fukushima coal embrace**

Japan is making a historic shift back to coal use after abandoning nuclear power in the wake of the 2011 Fukushima Daiichi disaster.

"Pre-Fukushima, Japan was planning to scale up nuclear to the range of 60 percent of its total energy generation by the end of the century," said Jackson Ewing, director of Asian sustainability at the Asia Society Policy Institute. "With the disaster, they've not only had to scuttle the expansionary plans, but they've had to considerably dial back the existing nuclear power that they have on the grid."

Nuclear now supplies only about 2 percent of the country's power needs, with coal making up a significant share of that delta not only in the short term, but in the country's future plans. More than 40 new coal power plants are planned, and significant new gas development is expected, too.

Ewing, who is also a faculty fellow at Duke University's Nicholas Institute for Environmental Policy Solutions, said Japanese energy policy's preference for fossil fuel investment threatens to crowd out renewable energy and throws into doubt the country's ability to meet its commitments to the Paris climate agreement. Plants like Isogo, he said, are part of the problem rather than part of the solution.

Han Chen, international climate advocate for the Natural Resources Defense Council, said even highly efficient coal-fired units like the ones Japan is investing in contribute to climate change.

"What Japan has claimed is that their high-efficiency, low-emissions coal technology will help reduce the environmental impacts," she said. The real difference between a conventional and a so-called "HELE" plant is on the order of a 5 or 10 percent cut in emissions, she said.

While the United States isn't building new coal plants now, fossil fuel advocates hope Trump administration policies can help stem the tide of coal plants facing closure. One solution for some existing coal units, said Douglas Hollett, a former head of DOE's Office of Fossil Energy, would be to upgrade and retrofit them to be more efficient. That would allow them to be dispatched to the grid ahead of other suppliers.

"That's the prize," he said.

Asian power markets give coal-fired generation access to the grid ahead of renewables, a fact that ensures more coal-fired power is

used than renewable energy, even in countries like China that are building substantial renewable power.

Apart from Isogo, Japan is home to an integrated gasification combined-cycle (IGCC) plant in Fukushima prefecture (Greenwire, Aug. 5, 2014).

### **Washington Examiner**

<http://www.washingtonexaminer.com/epas-scott-pruitt-declares-war-on-lead-three-years-after-flint-water-crisis-began/article/2646369>

### **EPA's Scott Pruitt declares 'war on lead,' three years after Flint water crisis began**

By Josh Siegel, 1/23/18, 12:01 AM

EPA Administrator Scott Pruitt has begun an effort to “eradicate” lead poisoning from drinking water, more than three years after the crisis in Flint, Michigan, started.

Pruitt hosted a meeting Jan. 8 for state and local officials at agency headquarters in Washington to obtain feedback on ways to update the 1991 Lead and Copper Rule, a federal mandate that dictates how communities test for lead in drinking water. It has not been revised in more than a decade.

“I got the sense there really is a serious undertaking at the EPA to revise the Lead and Copper Rule,” said Steve Via, director of federal relations for the American Water Works Association, which represents water utilities. “I took the ‘war on lead’ as being lead is a public health concern, and this administration has placed an emphasis on contaminants that have a public health impact.”

Critics question Pruitt’s sincerity, noting his aggressive agenda to delay, weaken, or eliminate other EPA rules, and suggesting the agency may try to weaken the Lead and Copper Rule to help the industry.

“Scott Pruitt knows what he is doing,” said Ronnie Levin, who manages the water and health program at the Harvard T.H. Chan School of Public Health and helped write the original Lead and Copper Rule. She left the EPA in August.

“Pruitt has been fighting EPA for many years, and has invested his entire professional career in figuring out how to sabotage protecting the environment. He has a very clear agenda, and so in this sense, I don't particularly think lead is a priority of his.”

Lead is a heavy metal that was used for decades in pipes and paint that is especially harmful to children, causing learning disabilities and slower growth.

The Lead and Copper Rule governs how much lead is acceptable in drinking water and what utilities must do if their water tests above the threshold. It requires public water systems to periodically test for lead and copper, limiting the amount of lead in drinking water to no more than 15 parts per billion. If more than 10 percent of sites sampled by water utilities in an area exceed 15 parts per billion, the utilities have to improve their corrosion control methods, and they eventually might have to replace their lead pipes.

Environmental advocates have argued for years that the law is easy to exploit and hard to enforce. Utilities are not required to test all sites, only “high risk” ones. Advocates say utilities are able to easily cheat compliance, manipulating sampling methods to temporarily lower lead levels without implementing corrosion control techniques or replacing pipes.

“The rule is not perfect,” Via said. “There are opportunities to make it better.”

Facing pressure during the Flint water crisis, the Obama administration initiated a process for revising the Lead and Copper Rule, proposing improvements such as strengthening the standards for replacing aging lead pipes.

But the EPA was not able to complete the update, and the Trump administration says it will finish the job, targeting August for a proposed revision to the rule. The agency delayed consideration of a new rule after promising to release one by January.

Pruitt has often criticized the Obama administration for its handling of the Flint water crisis, in which corroded pipes caused by a change in fresh water sources tainted the city’s drinking water with lead.

"There are tremendous challenges we have across the country with respect to service lines, in particular, communities and the lead that's seeping into the water supply of our children," Pruitt said at a Dec. 7 House Energy and Commerce Committee hearing. "It's one of the greatest environmental threats, I think, we face as a country, and one of the things that I hope that I can work with this committee on as we go into 2018 is a strategy over a 10-year period to eradicate those concerns."

Experts say federal requirements for testing lead in water are difficult to enforce and strengthen.

That's because lead typically enters water when it passes through lead service lines, after it has exited a treatment plant. Lead service lines are small pipes that connect homes and businesses to the larger main drinking water line in the streets.

So, testing for lead, unlike other contaminants, must occur in people's homes. Injecting anti-corrosion chemicals to drinking water can help manage the risk by preventing leaching, but replacing lead pipes is the best way to combat lead, according to a 2015 report by an external group of drinking water advisers organized by the EPA.

Replacing lead service lines is expensive. It's also challenging because there's uncertainty around who owns the lines — the water utility or homeowner — since they straddle public and private property.

In addition to the challenges of funding and ownership, most utilities do not know where pipes are located due to poor recordkeeping. Some were built as early as the 1920s.

"The Lead and Copper Rule is unique in that it shares responsibility between water companies and customers to protect people from lead at the tap," said Marc Edwards, a Virginia Tech scientist credited with discovering the Flint crisis. "It creates a massive legal mess that no one wants to deal with. Everyone knows what we want to do. Replace these lead pipes, find them, and get them out of the ground. The question is how, and who pays what, when there is very little discretionary funding."

The EPA, in its recent meeting with state and local officials, asked for input on the feasibility of replacing all lead service lines as part of a revised Lead and Copper Rule.

Pruitt, in his December testimony to Congress, expressed concern over the cost — up to \$30 billion — of replacing the 7 million to 11 million lines that are believed to exist across the country.

"I understand that's a costly endeavor," Pruitt said. "Look, it's not just service lines; it's corrosion control measures that need to be deployed, obviously paint as well. So, there's a multi-faceted approach that we need to evaluate on how to 'declare a war on lead,' if you will."

Some states and cities are taking their own action to strengthen rules, tired of waiting after delays by two administrations. Pruitt pointed to Michigan's progress in reforming its state-based Lead and Copper Rule.

Republican Gov. Rick Snyder announced the new initiative in March, saying "the federal Lead and Copper Rule is dumb and dangerous."

Five officials in Michigan were charged with involuntary manslaughter for their role in the Flint water crisis, where lead poisoning led to deadly outbreaks of Legionnaires' disease. The officials charged include two cabinet-level officials in Snyder's administration.

"The Flint water crisis was and is a failure of leadership," said an investigative report issued in June by Bill Schuette, Michigan's attorney general. "A cause of the breakdown in state governmental management was a fixation, a preoccupation, with data, finances and costs, instead of placing the health, safety and welfare of citizens first."

Eric Oswald, the director of the water division for Michigan's Department of Environmental Quality, told the Washington Examiner the state's proposed rule would require water utilities to investigate where lead service lines are located and to document lead levels.

The water division has faced the brunt of the blame for Flint's tainted water. Four of its officials face criminal charges. Liane Shekter-Smith, the head of the water division during the Flint crisis, was fired.

"We are focused on lessons learned from Flint," said Oswald, who took over the water division in May, and was not present during the Flint crisis.

The state's new plan would require utilities to replace the line within 20 years if lead exceeds 10 parts per billion, a tougher standard than the 15 parts per billion federal threshold.

Oswald said the state considered forcing all lead service lines to be replaced, regardless of lead level, but the concept proved too expensive. Michigan has an estimated 500,000 lead service lines, which would cost an average of \$5,000 each to replace, so \$2.5 billion in total. Flint has already replaced more than 6,000 lines under a separate settlement agreement between advocacy groups and state and local officials.

Oswald acknowledges the state's plan is expensive, and ratepayers may see higher water bills. Michigan proposes a \$10 million pilot project to help water companies pay for replacing the pipes.

"As the state of Michigan, we don't want to wait around to protect public health as best we can," Oswald said. "Our ultimate goal is to get lead out of the system. If your water bill goes up by \$1.50 month, and you eliminate all the lead, is that worth it? It's a question people have to ask themselves."

## **E&E Climatewire**

<https://www.eenews.net/climatewire/stories/1060071609/search?keyword=EPA>

### **The greenhouse gas Pruitt worries about**

By Scott Waldman, 1/23/18

Scott Pruitt is one of the Trump administration's most aggressive critics of climate change science, but lately he's been talking about the dangers of greenhouse gas.

Well, one greenhouse gas in particular: methane.

Like other conservatives in Washington, the EPA administrator has questioned basic climate science and said he plans to organize a debate on it this year, something many researchers fear will sow public confusion on an issue where there's already scientific consensus. Pruitt acknowledges the Earth is warming but casts doubt on the exact extent of humanity's influence. Shortly after being installed as the EPA administrator, he questioned whether humans are the primary drivers of climate change, rejecting the position of the vast majority of scientists.

But when it comes to methane, Pruitt has found common ground with climate scientists and environmentalists by calling the greenhouse gas a dangerous air pollutant.

It's an unexpected position coming from the administration official who was a driving force behind President Trump's decision to withdraw the United States from the Paris climate accord. It's also one that straddles the interests of climate activists and the energy industry, which loses billions of dollars annually as a result of methane leaks.

During a December hearing in front of the House Energy and Commerce Committee, Pruitt told Rep. Scott Peters (D-Calif.) that he "absolutely" believed methane is a dangerous air pollutant.

"On March 9, you said that carbon dioxide is not a primary driver contributing to recent climate change and that, said differently, you said CO2 is not the only contributor to climate change," Peters said. He asked the EPA boss, "Do you agree that methane, nitrous oxide and other greenhouse gases are air pollutants?"

Pruitt's response: "Absolutely, absolutely." He added, "And are more potent, actually, than CO2. Methane is more potent than CO2, as you know, in that regard."

Last week, Pruitt spoke about the dangers of methane as a driver of climate change again. Pruitt also told a group of environmental activists, known as Moms Clean Air Force, that he believed methane is contributing to global warming, according to a member of the group at the private meeting.

Dominique Browning, the group's senior director, said Pruitt told her that more work is needed to regulate methane. He told her he



wants to regulate methane along with volatile organic compounds, she said. Pruitt also told her that he was mostly concerned about the way the Obama administration wanted to control methane emissions.

"He said, 'Yes, methane is far more potent than carbon, and we haven't done a good enough job on methane,'" she said.

Browning said she could understand why Pruitt was so opposed to imposing regulations on industry, but would cheer any sort of significant action on methane.

"I don't care what the reason is; if he gets those leaks under control more quickly, I'm happy," she said.

### **'Methane is very valuable'**

Methane is a potent greenhouse gas, and scientists have determined that it is more dangerous when released into the atmosphere than carbon dioxide and is 25 times more potent during a 100-year period. It accounts for about 10 percent of humans' greenhouse gas emissions, according to EPA, and a significant amount leaks from hydraulic fracturing wells, where it is also flared off during the process. Some of the methane emissions are also natural, and the agricultural industry is a growing source of emissions, according to EPA. While the energy industry has painted natural gas as a much cleaner alternative to oil and coal, environmentalists point to methane as potentially wiping out those gains.

The Trump administration has targeted President Obama's attempts to regulate methane emissions. Since taking the helm of the agency, Pruitt attempted to suspend an Obama-era rule that would have restricted emissions on new oil and gas wells, although a court has blocked the suspension. Earlier this month, in the U.S. District Court for the Northern District of California, the Interior Department defended its decision to suspend key parts of the Bureau of Land Management's methane rule for a year. Earlier this month, EPA backed off a proposal to stay Obama-era methane regulations for new and existing landfills.

An EPA spokeswoman declined to answer specific questions about why Pruitt was mentioning controlling methane emissions.

Pruitt has touted his stewardship of EPA as being in partnership with industry. In a CBS interview this week, he said that "to achieve what we want to achieve in environmental protection, environmental stewardship, we need the partnership of industry."

Indeed, cutting down on methane loss could be a financial windfall for the energy industry. Methane loss costs the natural gas industry about \$5 billion to \$10 billion annually, according to NASA. At the December hearing, Pruitt said he wanted to incentivize the energy industry for reducing methane emissions but did not specify the nature of those incentives.

"Methane is very valuable," Pruitt said. "Companies don't like to flare methane because it can be captured and used in other ways. It's very marketable, if you will. So having a rule in place that incentivizes that and ensures that we approach it pursuant to the statute, I think, is something we should look at."

The energy industry supports regulating methane along with volatile organic compounds, as Pruitt has proposed, said Jack Gerard, CEO of the American Petroleum Institute. The industry opposed the Obama administration regulations but instead recently introduced a voluntary methane emissions reduction program, he said.

"Our counsel to this administration has been, 'We support appropriate regulation; we believe as methane emissions are continuing to go down, even as our natural gas production and consumption continues to go up,'" Gerard told E&E News last week in an interview. "That's a great success story. Why you'd want to go in and regulate something that's going in the right direction is beyond us. So yes, we support the appropriate regulation of methane coupled with our voluntary program. We think he'll continue to see that as it relates to methane."

Critics point out that Pruitt has not taken any significant steps to address climate change, while weakening dozens of regulations meant to address rising greenhouse gas emissions. Public schedules show Pruitt has mostly met with business groups, as opposed to environmental and public health groups. Late last year, he traveled to Africa to tout the United States' abundant natural gas resources.

Regulating methane can be a way to claim climate action even if Pruitt's actions are motivated by a desire to help the industry's bottom line, said John Walke, director of the Natural Resources Defense Council's Clean Air Project.

"Methane is money; every time you lose methane, you're losing product, and so the oil and gas industry has a built-in incentive," Walke said. "They're not seeking no regulation; they're seeking regulation they can live with, and Pruitt can accommodate them on that score and cast it as beneficial for the climate at the same time it is beneficial because he's helping them save product."

## **E&E News PM**

<https://www.eenews.net/eenewspm/stories/1060071605/search?keyword=EPA>

### **Pruitt to huddle with senior executives**

By Kevin Bogardus, 1/22/18

U.S. EPA Administrator Scott Pruitt announced today a planned confab with the agency's top executive managers next week.

In an email obtained by E&E News, Pruitt said EPA's Senior Executive Service corps will meet in Washington to discuss ways to "help us transform the agency and better deliver our vital mission."

"I am looking forward to talking with the agency's career and political leaders about their role in EPA's transformation," Pruitt said in the email sent to agency employees.

Pruitt touted the work of Assistant Deputy Administrator Henry Darwin, who's been tasked with streamlining agency procedures and boosting their effectiveness.

"The EPA Lean Management System (ELMS), which I have asked Assistant Deputy Administrator and Chief of Operations Henry Darwin to deploy throughout EPA, will provide every agency employee with the opportunity to identify better ways of serving the regulated community, states, grantees, stakeholders, and, ultimately, the American public," Pruitt said.

According to the meeting's agenda, Pruitt will give the SES conference's opening address next Monday. Over two days at the Omni Shoreham Hotel, EPA's executives will hear from top career and political leadership at the agency, with Darwin involved in several panels.

The EPA operations chief will run one panel on how the agency will use the "Lean" system, including how it can "make employees, customers, and taxpayer investors joyously happy."

Darwin will also be on a panel with other EPA officials to talk about how the agency is in a time of change.

"EPA is at an inflection point and has an opportunity to rethink how [it] works internally and with its customers," the agenda says.

In addition, several political appointees like senior chemicals aide Nancy Beck; enforcement chief Susan Bodine; Albert "Kell" Kelly, head of Pruitt's Superfund task force; and Bill Wehrum, who leads the air office, will discuss EPA's new strategic plan.

## **The Hill**

<http://thehill.com/policy/energy-environment/370258-trumps-former-chemical-safety-nominee-leaving-epa>

### **Trump's former chemical safety nominee leaving EPA**

By Timothy Cama, 1/23/18, 11:06 AM

President Trump's former nominee to lead the Environmental Protection Agency's (EPA) chemical safety office is leaving his job at the agency.

Michael Dourson was hired as a senior adviser to Administrator Scott Pruitt last October, after a fiery confirmation hearing. The hire angered Democrats, who accused Pruitt and Dourson of trying to do an end-run around the Senate's responsibility to confirm high-ranking government officials.

He withdrew from the confirmation process in December after a handful of GOP senators announced their opposition to him, dooming his nomination, but he stayed on in an advisory role.

Now, Dourson will leave that job in the coming weeks.

**“We wish him continued success in his future endeavors,” EPA spokesman Jahan Wilcox said.**

Democrats vocally objected to Dourson, who worked as a toxicologist for two decades, throughout his confirmation process, citing his history of working on behalf of the chemical industries as an insurmountable conflict of interest.

Dourson's organization conducted chemical analyses for companies, industry groups, states and other clients, often publishing findings far more friendly to industry than other toxicology assessments.

**“Never in the history of the EPA has a nominee to lead the chemical safety office had such deep ties to industry,”** said Sen. Tom Carper (Del.), top Democrat on the Environment and Public Works Committee, said at Dourson's October hearing.

**“You’re not just an outlier on this science, you’re outrageous in how far from the mainstream of science you actually are,”** said Sen. Ed Markey (D-Mass.).

The GOP currently has one a two-vote majority in the Senate, so any Republican opposition to nominees could doom them.

GOP Sens. Thom Tillis (N.C.) and Richard Burr (N.C.) both came out in opposition, and a handful of other Republicans said they were leaning against him as well.

Dourson's departure was first reported by Politico.

## **The Hill**

<http://thehill.com/opinion/energy-environment/370216-10-ways-the-trump-white-house-has-waged-war-on-smart-climate>

### **10 ways the Trump White House has waged war on smart climate policy**

By Lindsey Allen, 1/23/18, 7:30 AM

Since the inauguration one year ago, this administration has been a whirlwind of environmental threats, so let’s take a moment to reflect on what has actually happened. Here are 10 ways Donald Trump and his administration are pushing the world further towards catastrophic climate change.

#### **1. Fast-tracking and Green-lighting Pipelines**

Trump launched his presidency with a crusade to “unleash” fossil fuels and dismantle the environmental legacy of his predecessor. One of his first executive orders was green-lighting the controversial Dakota Access Pipeline — which President Obama had halted. And last March, Trump revived the Keystone XL pipeline — possibly the most publicly opposed fossil fuel megaproject of our time.

#### **2. Giving Big Oil the Biggest Voice: Secretary of State**

One of Donald Trump’s first cabinet appointments was choosing then-Exxon CEO Rex Tillerson as secretary of State to direct U.S. foreign policy. Exxon not only belongs to an industry partly responsible for causing climate change, but, an InsideClimate News investigation revealed, Exxon spread misinformation on fossil fuels and global warming. The company knew about the threat of climate change for decades, stretching back at least to the 1970s. Since then, the oil giant has contributed millions of dollars to think tanks and politicians skeptical of climate change.

As Union of Concerned Scientists president Ken Kimmell has said:

**“You wouldn’t hire the CEO of a tobacco company to serve as surgeon general. So why would you pick the leader of an oil and gas corporation to spearhead a position tasked with national security and global climate action?”**

#### **3. Pulling the U.S. Out of the Paris Climate Agreement**

Did you know that 2015, 2016 and 2017 were the planet’s hottest three years on record? In spite of this fact — and in spite of overwhelming evidence that climate change is one of the biggest threats to the planet — Trump decided to withdraw the United

States from the world's landmark commitment to limit the increase in global temperature to 1.5 degrees Celsius, arguing the decision was made for the sake of the U.S. economy.

#### 4. Opening Arctic Refuge to Drilling

Instead of pushing for clean energy and an end to our oil addiction, Trump signed legislation that opens up one of the world's most pristine and precious ecosystems in the world to oil drilling. The Arctic National Wildlife Refuge is the homeland of the Gwich'in Athabascan people of interior Alaska and the Inupiat people of the north coast, who argue that protecting the refuge is a matter of human rights.

#### 5. Shrinking National Monuments

In the largest reversal of national monument protections in U.S. history, Trump announced proclamations to shrink the size of Bears Ears by 85 percent and Grand Staircase-Escalante by 46 percent. The extreme shrinking of these national monuments in Utah makes way for extracting gas, oil, coal, and uranium.

"Once again the Trump administration has shown its affinity for pandering to fossil fuel interests and that it cares very little for the protection of our environment or for Indigenous Peoples," wrote the Indigenous Environmental Network in a statement.

#### 6. Gutting the EPA from the Inside

Trump appointed avowed EPA nemesis Scott Pruitt — who had sued the EPA 14 times as the Oklahoma attorney general — as the agency's head with an obvious mission: to dismantle the Environmental Protection Agency from within. The agency, since its 1970 launch, is tasked with keeping people safe from toxic pollutants, protecting the environment and addressing climate change.

Pruitt has already decided to eliminate more than 30 environmental protection rules, has reduced enforcement of the Clean Water Act and the Clean Air Act, postponed a rule requiring fossil fuel companies to collect and report more emissions data, and he has overruled EPA scientists and refused to ban a pesticide that has alleged links with brain and nervous system damage in young children. And that is only a partial list.

#### 7. Dropping Climate Change from List of National Security Threats

In December, Trump took yet another measure to de-prioritize climate change by dropping it from the country's list of national security threats. Trump, who once famously called climate change a "Chinese hoax", made this decision despite 2017's hurricanes devastating Puerto Rico and Houston, and wildfires raging out of control in California. Puerto Rico is still devastated in the aftermath of the horrific climate-change-fueled Hurricane Irma.

#### 8. Censoring Climate Change

Within one year, the term "climate change" vanished from a staggering number of federal agency website pages. The scrubbing of climate change information from government website is a deeply disturbing act of apparent state censorship.

According to an investigation by The Environmental Data & Governance Initiative:

"Links have been cut from pages or rendered useless, language has been changed to alter emphasis and drop mentions of climate-change-related topics, and entire climate websites have been removed and made significantly less accessible."

#### 9. Leasing Off Offshore Waters to Oil & Gas

Under the Trump administration, the Interior Department said it wants make 90 percent of the continental shelf, the submerged offshore area between state coastal waters and the deep ocean, open to drilling. The proposal will reverse the Obama administration's protection of 94 percent of the outer continental shelf.

According to a statement issued by Interior Secretary Ryan Zinke: "Providing the offshore industry access to the maximum amount of opportunities possible" is a "pillar of President Trump's plan to make the United States energy dominant."

#### 10. Slashing Funds for Environmental Protection

Trump's original budget proposal set out to slash \$2.5 billion from the Environmental Protection Agency, which would have translated to 31 percent of its budget. Instead, Congress voted for a \$528 million decrease. Though this cut is less severe, whole programs will be eliminated and the EPA's ability to enforce environmental standards will be constrained.

## Politico

<https://www.politicopro.com/agriculture/article/2018/01/wotus-opponents-supreme-court-win-may-prove-short-lived-303736>

### WOTUS opponents' Supreme Court win may prove short-lived

By Annie Snider, 1/22/18, 7:21 PM

Opponents of the Obama administration's Waters of the U.S. rule won at the Supreme Court on Monday — but legal experts say it may have been a win in name only.

The high court decided that lawsuits relating to the Waters of the U.S. rule must start at the lowest level of the federal court system, rather than being able to leap-frog directly to a circuit court of appeals. That was the result sought by most industry groups and Republican state officials who had sued to block the Obama-era rule. But now that President Donald Trump's appointees are seeking to undo the contentious rule and write a replacement restricting federal power under the Clean Water Act, the Supreme Court decision could backfire.

Where former President Barack Obama's opponents had hoped to shape their legal challenge by filing lawsuits in friendlier red-state jurisdictions, environmental groups gearing up to challenge Trump's replacement will now be able to focus on their own preferred courts in places like California or Washington, D.C.

Furthermore, EPA Administrator Scott Pruitt now has to scramble to prevent the Obama rule from taking effect because an appellate court stay will have to be lifted. And it is unlikely that lawsuits over Pruitt's replacement rule, broadly expected to reach the Supreme Court, will be resolved by the end of Trump's first term in office now that they must begin in district court.

"It's really a case of 'be careful what you wish for,'" said Patrick Parenteau, a Vermont Law School professor.

The legal battle lines over the 2015 rule were drawn when Obama's critics were anticipating a Democratic White House that would keep defending it.

The Obama administration had argued that litigation over the rule fell under a narrow provision of the Clean Water Act that required challenges related to pollution limits to start at the appellate level. It was an argument based primarily on efficiency, in the interest of avoiding long and expensive legal battles across the country. And while the Trump administration came into office bent on undoing the underlying rule, it maintained the appellate-first argument.

The seemingly arcane legal question created odd-bedfellows' alliances among outside groups that did not split along traditional ideological lines. The Natural Resources Defense Council sided with the Trump administration on the question of jurisdiction, while the American Farm Bureau Federation, Pruitt's successor as Oklahoma attorney general, and the Waterkeeper Alliance lined up together on the other side.

Underneath the legal arguments, though, was strategy: Starting in district courts allows challengers to file lawsuits in jurisdictions where they suspect they'll find a sympathetic judge. When it was red states and industry groups challenging the Obama rule, cases piled up in North Dakota, Texas and Georgia.

While the Obama administration's rule is still technically on the books, the main fight going forward will be over the Trump administration's effort to repeal it.

The first hurdle for EPA will be ensuring that the Obama rule doesn't go into effect. The 6th Circuit Court of Appeals had issued a nationwide stay, but with the high court ruling that that court didn't have jurisdiction in the first place, the stay will have to be lifted.

The Trump administration anticipated this possible outcome and has a regulation to delay implementation of the water rule in the works. David Ross, EPA's new water chief, told POLITICO he expects that rule to be finalized "within a month," and said that procedural formalities at the courts would mean the delay rule would be finished before the court lifts its stay. "We had a plan in

place to address this exact situation," he said.

Industry groups closely aligned with the Trump administration have also indicated that they're prepared to act to keep the Obama rule from going into effect if it comes to that. The American Farm Bureau Federation "is considering its options to avoid application of the 2015 rule while EPA moves forward with an appropriate long-term solution that provides clear rules and clean water without requiring a federal permit to plow a field," Ellen Steen, the group's general counsel, said in a statement.

Environmentalists said they were confident the ruling would ultimately lead to courts upholding the underlying principles of the Obama-era rule, also known as the Clean Water Rule.

"Although today's decision may draw out the timeline for judicial review, we are confident the courts will ultimately uphold the basic substance of the rule, as it is based on sound science and clear legal precedent," Collin O'Mara, president and CEO of the National Wildlife Federation, said in a statement.

Still, the Supreme Court ruling forces a tight timeline on the Trump administration as it attempts to wrap up the delay rule and its next step, a rule to rescind the Obama rule, both of which are expected to face immediate court challenges.

And after Monday's court ruling, those challenges will have to go through district courts, too — most likely ones of greens' picking.

Parenteau, the Vermont Law School professor, said to look for environmentalists to challenge in their two preferred courts: the Northern District of California and District Court for the District of Columbia. Industry groups that support the Trump administration's moves could theoretically file a "friendly" challenge to the rescission rule as a way of loading the dice with courts more likely to sympathize with their arguments, but legal experts say they don't expect nearly as many suits as were filed over the original Obama rule.

It will likely take years for the challenges to work their way through district and appellate courts, and the issue could well land before the Supreme Court again in the end. Meanwhile, the Trump administration still has plans on the books to issue its own replacement rule defining the scope of federal Clean Water Act jurisdiction much more narrowly. According to EPA's latest estimate, that rule would be finalized in June 2019 — likely too late for challenges to make their way to the high court before the end of Trump's first term.

Larry Liebesman, a former DOJ attorney now with Dawson and Associates whose clients include industry groups, said that, while time consuming, this approach could result in a better decision in the end as the arguments will be well-hashed out by the lower courts before landing at the Supreme Court.

"It would certainly give a voice to proponents and opponents equally in front of the Supreme Court," he said.

But that will take years. In the meantime, legal experts say, the long-running uncertainty over the scope of the Clean Water Act will continue to reign.

## **The Hill**

<http://thehill.com/opinion/energy-environment/370162-do-no-harm-keep-the-clean-power-plan>

### **Do no harm: Keep the Clean Power Plan**

By Gary Cohen and Aparna Bole, 1/22/18, 5:00 PM

Scott Pruitt, the administrator of the Environmental Protection Agency (EPA), is attempting to repeal the Clean Power Plan, lifesaving standards that set the first federal limits on carbon pollution from power plants and encourage investment in cleaner, safer sources of energy. If he succeeds, it would be a public health disaster.

As a replacement for the Clean Power Plan, Pruitt has indicated he is considering an "inside the fence line" approach, narrowly focused on improving the efficiency of coal-fired power plants, one at a time. This is a dangerous alternative. This approach would actually do more harm than good, causing thousands of additional pollution-related deaths each year and costing billions more than the Clean Power Plan.

Toxic air pollutants from coal-fired power plants, including mercury, lead, and arsenic, have been shown to cause respiratory illnesses, neurological damage, heart disease, stroke, cancer, and premature death. In the United States, the annual deaths associated with fine particulate matter alone have been estimated to be as high as 52,000 — more than all the people killed in car accidents each year.

Infants and children are particularly at risk for many reasons. For example, critical phases of lung development begins in the fetal period and continues through the teens. Children also breathe more air per pound of body weight than adults.

Additionally, a growing body of scientific research demonstrates that childhood exposure to pollution from coal-fired power plants has neurologic consequences, including impaired cognitive functioning and reduced verbal and nonverbal IQ, memory, test scores and grade-point averages among school children.

Air pollution also disproportionately threatens pregnant mothers by negatively impacting fetal health and contributing to preterm birth and low birth weight. By delaying action to cut power plant pollution and weakening existing protections, the Trump administration is all but guaranteeing lifelong, harmful consequences for many of our nation's children.

Instead of continuing down the costly and dangerous path of repeal and replace, Pruitt and the EPA can protect the health of our communities and a healthy future for our children by implementing the Clean Power Plan. Doing so would prevent up to 90,000 asthma attacks in children, 1,700 hospital admissions, 300,000 missed school and work days. A recent analysis by the Trump administration even found that implementing the Clean Power Plan would prevent as many as 4,500 premature deaths each year.

The Clean Power Plan will also save money and reduce health care costs, providing public health and climate benefits worth up to \$54 billion per year. We have already seen the health cost savings of reducing carbon pollution in the nine states who participate in the Regional Greenhouse Gas Initiative (RGGI). Since 2009, reducing carbon pollution and other air pollutants have generated \$5.7 billion in health savings and other benefits as a direct result of healthier families and workers.

Carbon pollution from coal-fired power plants is also a leading cause of climate change, which is one of the most significant current threats to our public health and safety. Last year, many communities across the U.S. experienced devastating and unprecedented storms and wildfires, causing hundreds of deaths and injuries and lingering mental health impacts for the thousands who lost their homes and livelihoods.

Extreme weather, worsened by climate change, caused \$306 billion in U.S. damage in 2017, the most expensive year on record. Advances in science have now made it possible to link more intense and more frequent extreme weather events to climate change.

According to a study by an international coalition of scientists, human-caused climate change made the record-breaking rainfall during Hurricane Harvey roughly three times more likely to occur and 15 percent more intense.

By reducing carbon pollution 32 percent below 2005 levels, the Clean Power Plan is critical to avoiding the worst impacts of climate change and protecting our communities from costly storms and deadly wildfires — as well as the trauma that accompanies these tragic events.

Every day that pollution from coal-fired power plants continues unabated costs precious lives, leads to lifelong health impacts for our youngest and most vulnerable citizens, and increases the likelihood that thousand-year storms will become our new normal.

The EPA must fulfill its mission by protecting the most vulnerable Americans from well documented threats. In this case, the path is clear: The EPA should heed the scientists, parents, health professionals, and vast majority of the American public, and fully implement the Clean Power Plan. Lives are at stake.

## **E&E News PM**

<https://www.eenews.net/eenewspm/stories/1060071607/search?keyword=EPA>

### **EPA undercounts chicken farms' ammonia emissions — report**

By Sean Reilly, 1/22/18

U.S. EPA may be dramatically undercounting ammonia emissions from chicken-raising operations, with potentially serious

consequences for a landmark Chesapeake Bay cleanup plan, an advocacy group concluded in a report released today.

The Environmental Integrity Project calculated that ammonia releases from poultry manure are likely twice as high per bird as EPA projections. Accordingly, yearly emissions for the nitrogen-based compound in Maryland and other states in the Chesapeake Bay region add up to an estimated 40,000 tons, or double EPA's 20,000-ton figure, the report said.

Gaseous ammonia, a pungent lung irritant, can drop back to earth, where it may promote damaging algae blooms and low-oxygen "dead zones" in water bodies.

The "total maximum daily load" standards in the 2010 bay cleanup plan don't factor in agricultural ammonia emissions because EPA is counting on cuts in airborne nitrogen oxides from other sources to meet its 2025 goals, the report said. "That scenario will be undermined if ammonia emissions prove to be higher than EPA expects," it added.

Despite progress on many sources of bay nitrogen, "ammonia emissions are probably increasing in lockstep with broiler production," Abel Russ, an Environmental Integrity Project attorney and the report's author, said in a statement. The impact, he added, could spell the difference "between a restored Chesapeake Bay and waters that continue to be impaired."

EPA press aides did not immediately provide a response to an emailed request for comment sent this morning. Historically, the agency has at best moved slowly to keep tabs on farm-related air pollution.

In an audit released last September, the agency's inspector general faulted EPA for failing to follow through on a 2005 commitment to devise reliable emissions estimating methods from large-scale "animal feeding operations" (Greenwire, Sept. 20, 2017).

On a related front, EPA attorneys on Friday asked a federal appeals court for a three-month delay of tomorrow's deadline to start enforcing pollution reporting rules for such operations, commonly dubbed factory farms (Greenwire, Jan. 22). As of publication time this afternoon, the U.S. Court of Appeals for the District of Columbia Circuit had not issued a ruling on the motion.

Release of today's report fell two days before a Maryland Senate committee's plan for a hearing on a bill that would create an independent panel to come up with methodologies for state regulators to use in gauging releases of ammonia, particulates and other pollutants from large animal feeding operations.

In the case of poultry, the report says EPA's Chesapeake Bay model assumes that "broiler barns" emit the same amount of ammonia per bird as European facilities. That assumption discounts that U.S. poultry operators raise larger chickens that emit more ammonia-forming manure, the report said. It also fails to note that American growers work in a warmer climate and reuse litter much more than their European counterparts.

As a corrective, Russ urged the agency to clarify and, if necessary, "adjust" its assumptions "to reflect the current state of the science with regard to American broiler operations."

## **BNA**

[http://esweb.bna.com/eslw/display/no\\_alpha.adp?mode=si&frag\\_id=127270101&item=408&prod=deln&cat=AGENCY](http://esweb.bna.com/eslw/display/no_alpha.adp?mode=si&frag_id=127270101&item=408&prod=deln&cat=AGENCY)

### **EPA Defends Its Rule Exempting Water Transfers From Permits**

By Amena H. Saiyid, 1/23/18

The Supreme Court shouldn't entertain a petition to force the EPA to regulate transfers of water under the federal water pollution permitting scheme, the Justice Department argued.

That responsibility was given to the states and local agencies by Congress, which sought to strike a balance under the Clean Water Act between federal and state responsibilities for overseeing pollution programs, DOJ attorneys wrote in a Jan. 19 [response](#) to coalitions of states and environmental groups seeking Supreme Court review.

The potential question before the Supreme Court is whether it's illegal to transfer water from one body to another, such as a diversion for irrigation or to supply water, without getting a Clean Water Act discharge permit.



The law directed the Environmental Protection Agency to provide guidance to states for addressing nonpoint sources of pollution, including “changes in the movement, flow, or circulation of any navigable waters,” the government argued in its brief urging the court not to take the case.

### Water Transfers

Water transfers include intentionally routing water through tunnels, channels, or natural stream courses for public water supplies, irrigation, power generation, flood control, and environmental restoration.

A 2008 Environmental Protection Agency regulation said the transfer of water that occurred without any intervening municipal or industrial use did not need a discharge permit.

But its attempt to put the decades-old dispute about the need to formally permit transfers instead spurred a whole new round of litigation.

In 2017, the U.S. Court of Appeals for the Second Circuit upheld the EPA's rule and its interpretation of the Clean Water Act as reasonable, but allowed that it may not be the “best or most faithful interpretation of the Act” in terms of its goal to restore and protect water quality.

### Downstream States at Risk

Led by New York, seven states and the Canadian province of Manitoba disputed this reading and petitioned the Supreme Court, saying the EPA rule ignores the costly and adverse impacts from water transfers on downstream states that have to spend money treating or cleaning it up.

A coalition of environmental groups, led by Riverkeeper Inc., also challenged this interpretation on grounds that the Clean Water Act prohibits any addition of pollutants from any source to federally protected waters unless they are specifically authorized by a permit.

However, government attorneys maintained that neither that language nor any other Clean Water Act provision defines the term “addition” or otherwise directly addresses whether the transfer of water within the waters of the U.S. is covered.

At the same time, they reminded the court that nothing in the 2008 rule precluded a state, under state law, from regulating water transfers that aren't subject to the federal National Pollutant Discharge Elimination System permitting program.

The petitioners are pitted against 11 other states, led by Colorado, that back the EPA regulation. New York City is opposing its own state's position, as are municipalities and water districts, including the South Florida Water Management District that went up against the Miccosukee Indian Tribe in a water transfer case that the Supreme Court addressed in 2001.

Subjecting all water transfer projects nationwide to federal discharge permits would be cost prohibitive and would ignore the practical realities facing western water providers, Colorado Attorney General Cynthia Coffman wrote in a brief on behalf of eleven states and western water districts.

Coffman cited estimates in the hundreds of millions of removing naturally occurring contaminants from water diversions that are commonplace in the West.

That case involved the transfer of phosphorus-contaminated water from canals in the Everglades into Lake Okeechobee by the South Florida Water Management District.

### Pump and Treat?

The Miccosukee prevailed when the high court ruled that a pumping station that transferred the contaminated water from a south Florida canal into a water conservation area may require a Clean Water Act permit, even though the pump did not actually add pollutants to the water being conveyed.

Other cases involved transfers within the New York City drinking water supply's Catskill/Delaware watershed and water transfers by municipal water systems and corporations.

The Second Circuit has ruled twice on the EPA's attempts to avoid issuing permits for water transfers, once in 2001 and again in 2006. The Supreme Court ultimately denied review in 2007.

**BN**

[http://esweb.bna.com/eslw/display/no\\_alpha.adp?mode=si&frag\\_id=127270100&item=408&prod=deln&cat=AGENCY](http://esweb.bna.com/eslw/display/no_alpha.adp?mode=si&frag_id=127270100&item=408&prod=deln&cat=AGENCY)

## **Court to Weigh EPA Authority to Delay Chemical Safety Rules**

By Sam Pearson, 1/23/18

A federal appeals court will hear oral arguments March 16 in a case challenging EPA Administrator Scott Pruitt's authority to delay an Obama-era chemical safety regulation aimed at protecting emergency responders.

The Obama administration issued the rule last year in the closing days of the administration, setting new emergency response and information sharing requirements for high-risk chemical facilities. The changes—originally meant to take effect this March—would substantially update the EPA's risk management program, a set of regulations authorized under the Clean Air Act, for the first time since the agency issued them in 1996.

The case started June 15, 2017, when safety and environmental groups claimed, in a filing to the U.S. Court of Appeals for the District of Columbia Circuit, that Pruitt violated the Clean Air Act in delaying the rule's effective date to Feb. 19, 2019. They said the law allows for no more than one three-month postponement under a single reconsideration proceeding, a process established under the Clean Air Act.

The court announced Jan. 22 it would hear oral arguments in the case March 16.

### **High-Risk Chemical Management Plan**

The program would require facilities using large quantities of certain high-risk chemicals to develop a program to manage the hazards, complete a risk management plan, and submit the information to EPA.

A loss for the EPA could force it to allow the rule, which Pruitt and industry organizations have criticized as burdensome, to take effect. Advocacy groups have asked the court to vacate the EPA's delay of the rule, meaning it “would be back in effect immediately at that point,” Gordon Sommers, an Earthjustice associate attorney representing the groups, told Bloomberg Environment.

If that happens, companies will have “no one to blame but themselves” if they are unprepared to comply with the rule, Sommers said.

The EPA didn't respond to Bloomberg Environment's request for comment.

### **Arbitrary, Capricious**

An interagency working group set up after a Texas fertilizer explosion killed 15 people in 2013 identified the 1996 risk management program as still “effective,” but noted that continued major safety incidents showed the program would not work if it was not updated to “continuously advance process safety management.”

The safety and environmental groups that brought suit allege the delay is “arbitrary and capricious, or otherwise not in accordance with law,” because the EPA failed to rebut the rulemaking record established by the Obama administration showing the necessity of the rule.

Justice Department attorneys wrote in a brief filed Dec. 8 that the Pruitt EPA acted appropriately because the agency learned the regulation's costs may outweigh its benefits, and provisions in the final rule may increase risks and burdens to states, local communities, first responders, and regulated companies.

Had the original rule remained in place, companies would have faced multiple compliance deadlines beginning March 14, 2018, and extending to March 15, 2021.

## **EPA Open for Business but Staff Kept in the Dark on Specifics**

By Abby Smith and David Schultz, 1/23/18

EPA staff arrived at the agency for work as usual Jan. 22 despite the government shutdown, but employees say communication from political management was “sporadic,” lacked specifics, and did little to boost morale.

“Unlike with previous shutdowns, there was no communications prior to the shutdown,” Becky Daiss, who works in the Environmental Protection Agency's chemicals office, told Bloomberg Environment. “It's ironic that [Administrator Scott Pruitt] wants us here because he usually doesn't want us here.”

Pruitt sent a memo to staff Jan. 19 saying the agency has “sufficient resources to remain open” for the week of Jan. 22.

Until that memo, agency staff “had little to nothing to go on. We still have little to nothing,” John O'Grady, president of the American Federation of Government Employees union division that represents EPA employees, told Bloomberg Environment.

On Jan. 22, however, lawmakers and the White House reached a deal to end the shutdown.

### **‘Sporadic’ Communication**

In prior shutdowns, particularly the 2013 shutdown during the Obama administration, O'Grady said agency staff received a lot of detail about the EPA's plans. But this time, top EPA officials have been largely mum on specifics, he said. “We should be informed, and efforts should be made to keep morale up,” he said.

Daiss said communication has been “very sporadic.” She said she found out the EPA would be open Jan. 22 from Washington radio station WTOP.

### **Meetings On Schedule?**

According to Pruitt's memo, the EPA would remain open—though agency officials haven't provided specifics beyond that all travel must be approved by the administrator's office.

The EPA's Environmental Laboratory Advisory Board held a Jan. 22 meeting in Albuquerque, N.M., as scheduled, according to Lara Phelps, the EPA's designated federal officer for the committee.

But it is unclear whether a Jan. 23-24 public meeting of the Human Studies Review Board will take place. The EPA declined to comment on the status of that meeting.

The agency also is listed as a sponsor of the National Air Quality Conference in Austin, Texas, from Jan. 24-26 where agency staff were scheduled to participate and speak.

The EPA's Office of Inspector General in a Jan. 22 notice on its website said “with the exception of our hotline and certain law enforcement functions,” the office would be closed.

The notice said that while the EPA said most of its offices would be open through Jan. 26 if the shutdown continued, the OIG is independent of the agency and has a separate appropriation.

## **Politico**

<https://www.politicopro.com/newsletters/day-ahead/2018/01/shutdown-over-for-now-080545>

### **Shutdown over for now**

By Kaitlyn Burton, 1/23/18, 5:01 AM

DRIVING THE DAY — The federal government is back in business, at least until the next tranche of funding runs out on Feb. 8.

Congress' dramatic turnaround came after Senate Democrats received a commitment from Republicans to hold a vote on immigration legislation, Seung Min Kim, Burgess Everett and Elana Schor report. If a broader deal isn't reached by Feb. 8, the Senate would take up legislation to protect hundreds of thousands of young undocumented immigrants who are losing legal protections, as long as the government remains open.

"The process will be neutral and fair to all sides," Minority Leader Chuck Schumer said of the immigration commitment from Majority Leader Mitch McConnell. "We expect that a bipartisan bill on [the Deferred Action for Childhood Arrivals program] will receive fair consideration and an up-or-down vote on the floor."

Off to Davos: A delegation of Trump administration officials will fly to Davos, Switzerland, for the World Economic Forum. The group, led by Treasury Secretary Steven Mnuchin, includes Commerce Secretary Wilbur Ross, Homeland Security Kirstjen Nielsen and U.S. Trade Representative Robert Lighthizer. President Donald Trump will travel to the elite economic summit later this week.

Good Tuesday morning and welcome to Day Ahead, where your host is getting a kick out of these photos of people falling through ice in the Capitol Reflecting Pool. Send thoughts and tips to [kburton@politico.com](mailto:kburton@politico.com) (@knicoleburton).

Countdown clock — Under the current stopgap spending bill, Congress has 16 days until government funding expires Feb. 8.

#### HOUSE FLOOR

The House is out.

#### SENATE FLOOR

The Senate will convene at noon and resume consideration of Jerome Powell's nomination to be Federal Reserve chairman, before recessing from 12:30 to 2:15 p.m. for the weekly caucus lunches. Lawmakers could take votes today.

#### MARKUP SPOTLIGHT

Nothing today.

#### COMMITTEE HEARINGS

— 10 a.m. Senate Banking hearing on Jelena McWilliams to head the Federal Deposit Insurance Corporation, Marvin Goodfriend to join the Federal Reserve Board of Governors and Thomas Workman to be a member of the Financial Stability Oversight Council. 538 Dirksen.

— 10 a.m. Senate HELP hearing on public health threats. 430 Dirksen.

— 10 a.m. Senate Energy and Natural Resources hearing on the electric power system in the Northeast and mid-Atlantic. FERC Chairman Kevin McIntyre will testify. 366 Dirksen.

— 2:30 p.m. Senate Commerce subcommittee hearing on surface transportation security. TSA Administrator David Pekoske and acting DHS Inspector General John Kelly will testify. 253 Russell.

#### POTUS HAPPENINGS

1:30 p.m. Trump signs Section 201 trade actions. Oval Office.

#### VPOTUS DIGEST

Vice President Mike Pence is in Israel, where he'll visit Yad Vashem and the Western Wall.

#### ON THE HORIZON

PRUITT VISIT CANCELED: EPA Administrator Scott Pruitt won't be traveling to Japan or Israel this week after all, Emily Holden reports. The agency didn't say whether the changeup is directly related to the shutdown. And EPA spokesman Jahan Wilcox didn't say when the Japan trip would be rescheduled or if Pruitt planned to travel to Israel at a later date.

DRILLING HEARINGS DELAYED: The Trump administration postponed a slate of public hearings on its latest offshore drilling draft plan because of the shutdown, Ben Lefebvre reports. The hearings would have been held this week in Augusta, Maine; Baton Rouge, La.; Anchorage, Alaska; Concord, N.H.; Boston; Montgomery, Ala.; and Providence, R.I. The agency in charge of the plan will publish new meeting times after the government reopens.

PANEL LOOKING INTO MEEHAN: The House Ethics Committee opened up an investigation into sexual harassment allegations

against Rep. Pat Meehan (R-Pa.), who left the panel two days earlier amid revelations that he settled a misconduct claim filed by a former aide, Elana reports. The inquiry follows a formal request by Meehan, whose office acknowledged he used his personal office budget to settle the harassment claim, after its existence was reported by The New York Times. Rep. John Ratcliffe (R-Texas) is taking over Meehan's seat on the ethics panel.

**EPA SAYS NO TO WOTUS:** The Obama administration's Waters of the U.S. rule won't go into effect, EPA says, despite Monday's Supreme Court ruling that invalidates a stay of the 2015 rule, Annie Snider reports. EPA water chief David Ross told POLITICO his agency will finalize a rule delaying implementation of the WOTUS rule in about a month, which is how long he expects the legal formalities at the Supreme Court and the 6th Circuit Court of Appeals to take before the nationwide stay is lifted. "We had a plan in place to address this exact situation," Ross said. He added that the process for finalizing the delay rule is moving "very quickly" and he does not expect it to be delayed by the shutdown.

**FOR THE ROAD**

**WHERE IN THE WORLD IS TRUMP'S CABINET:**

— Secretary of State Rex Tillerson will visit Paris to meet with senior French officials about Syria, Iran, Lebanon, Libya, North Korea and Ukraine.

— Defense Secretary Jim Mattis travels to Jakarta, Indonesia, where he's set to huddle with Indonesian President Joko Widodo and Indonesian Defense Minister Ryamizard Ryacudu to discuss maritime cooperation.

**ON THE CALENDAR:**

— 11 a.m. The American Enterprise Institute holds a chat on "intelligence beyond 2018" with CIA Director Mike Pompeo.

— 12:30 p.m. Council on Foreign Relations President Richard Haass discusses an article on the Kremlin with coauthors former Vice President Joe Biden and Michael Carpenter, former deputy assistant secretary of Defense.

## **The Hill**

<http://thehill.com/opinion/energy-environment/370280-american-carmakers-are-sabotaging-their-pledges-on-climate>

### **American carmakers are sabotaging their pledges on climate standards**

By Robert Weissman and Michael Brune, 1/23/18, 12:00 PM

Search the Washington Auto Show website to see what electric vehicles will be on display this week, and you'll find an assortment of German and Japanese plug-in hybrids and full electric vehicles. And from U.S. manufacturers? Chevrolet's Bolt and Volt and Chrysler's Pacifica plug-in hybrid. That's it.

Given the recent cascade of announcements from automakers seeking to burnish their green bona fides by pledging to spend billions on electric vehicles, how is it that a major auto show held in our nation's capital features just two U.S. electric vehicles from a single U.S. manufacturer?

Because the public rhetoric from U.S. automakers on electric vehicles doesn't match up with their actions behind the scenes. Automakers in the United States are collaborating with the Trump administration to sabotage the same clean car and fuel-efficiency standards that they endorsed just a few years ago. By doing so, they are making a reckless u-turn that will hurt consumers, the environment, and ultimately their own competitiveness.

Two days after the 2016 election, the Alliance of Auto Manufacturers, which represents 12 major car companies that operate in the United States, including Ford and GM, sent a letter to president-elect Donald Trump's transition team urging the incoming administration to reconsider the standards, which would improve average new car fuel efficiency to 54 miles per gallon.

In the letter, the industry made fact-starved assertions about the cost of the standards and the technical challenges of compliance, claims that aren't supported by the best independent analyses. A 2016 technical assessment by the U.S. Environmental Protection Agency, the National Highway Traffic Safety Administration and the California Air Resources Board showed that automakers already were meeting the Obama-era standards faster and more affordably than predicted.

Around the world, in fact, more forward-thinking automakers and countries are pledging to be all-electric within the next dozen years. The days of the internal combustion engine clearly are numbered. Nonetheless, employing the time horizon of fruit flies, the U.S. auto industry refuses to look beyond its short-term profits. Automakers are doing this for one reason only: They know they can make more money by selling gas-guzzling vehicles, and they want to grab all they can, right now.

They certainly aren't doing it to satisfy their customers because the standards they previously endorsed are wildly popular with consumers. It's easy to see why. Once enacted, these standards would save hundreds of billions of dollars at the gas pump while preventing six billion tons of dangerous climate pollution. The fuel-cost savings alone would more than make up for the modest cost of improving fuel efficiency. Overall, these standards would save thousands of dollars for every automobile purchaser. Little wonder, then, that polls show 95 percent of Americans want automakers to improve fuel efficiency.

But in the Trump administration, the auto industry has found an enthusiastic ally in its quest to undermine fuel efficiency and carbon pollution standards. EPA administrator Scott Pruitt has met repeatedly with auto executives, and in August he announced plans to reopen the midterm review of clean-car and fuel-efficiency standards, with the likely intention of rolling them back. By doing so, Pruitt, a confirmed climate denier, is taking aim at the largest federal climate action program on the books, at the expense of the American people and public health.

But for Pruitt, at least, this action is consistent with a long and deeply held belief in promoting the interests of corporate polluters at all costs. He at least can't be charged with the same degree of hypocrisy as the auto companies, which are seeking to undermine efficiency and emissions standards that they previously embraced. In 2011, they joined climate and labor groups to support President Obama's landmark clean car standards.

For no automaker is that hypocrisy more glaring than Ford Motor Company. Its executive chairman, Bill Ford, Jr., is described on the company's website as a "lifelong environmentalist." He has stated that "climate change is real and a critical threat, and we will continue to work with leaders around the world in support of ambitious global greenhouse gas reduction targets." Can this really be the same executive whose company is lobbying the Trump administration and Congress to weaken clean car standards?

We can't afford to let these auto companies drag us backward to the days of gas guzzlers, eye-popping costs to fill the tank, poisonous air and unfettered carbon pollution. That's why Public Citizen and the Sierra Club have launched a campaign with Greenpeace, Environment America and Safe Climate Campaign to demand that Ford and other automakers fulfill their promises to save consumers money, help curb climate change, protect public health, and advance innovation.

The vehicle search page for the Washington Auto Show also has this disclaimer: "This page does not show all of the vehicles that will be at the Washington Auto Show." It's probably too late to fill the convention center with electric vehicles, but it's not too late for the American people to send a message to Ford and the rest of the industry: Drive us forward to a cleaner, better future.

## **Reuters**

<https://www.reuters.com/article/us-philadelphia-energy-solutions-bankrup/u-s-refiner-pes-pins-bankruptcy-plan-hopes-on-biofuel-costs-idUSKBN1FB26M>

### **U.S. refiner PES pins bankruptcy plan hopes on biofuel costs**

By Jarrett Renshaw, 1/22/18

NEW YORK (Reuters) - Philadelphia Energy Solutions, owner of the largest U.S. East Coast refinery, said on Monday its plan to get out of bankruptcy hinges on whether it can shed existing biofuel costs under the country's renewable fuel laws.

The plan revives a debate between U.S. refiners and ethanol producers over renewables policy, and could spur actions from other struggling refiners should the U.S. Environmental Protection Administration allow PES to reduce its biofuel obligations.

The Trump Administration could also wade deeper into the fray should the Pennsylvania refinery, which has some 1,100 workers, face closure.

PES told its employees on Sunday it would file for Chapter 11 bankruptcy, pinning its financial difficulties on renewable fuel laws, Reuters reported. In its bankruptcy filing on Monday, the company said it does not have enough cash to comply with the laws for 2016 and 2017.

But PES has also seen its debt grow after its backers took out a \$550 million loan used for dividend-style payouts.

PES said its biofuels obligation for 2016 and 2017 totals about \$185 million. The company also plans to sell \$150 million worth of credits to help emerge from bankruptcy.

Regulatory liabilities are generally given high priority in bankruptcy proceedings, making getting out of such obligations difficult. However, the government has provided relief in past cases, particularly when there is a political dimension, experts have said.

The U.S. Renewable Fuel Standard (RFS) is a Bush-era law that requires refiners to blend biofuels like ethanol into their fuels or buy credits from those who do. Those credits used to trade at a nominal price of just a few cents, but have soared in recent years.

Stephen Lubben, a professor at Seton Hall Law School, said other struggling refiners may also attempt to offload these obligations if the PES bankruptcy gives the refiner relief.

“The EPA will look closely to make sure this is not a sham to leave them holding the bag,” said Lubben. He said a debtor that cannot comply with such rules usually has to liquidate. “If you want to restructure, the business coming out the other side has to comply.”

The bankruptcy plan would be in jeopardy if the bankruptcy court forces the company to comply with its existing RFS obligations, PES warned.

Critics have argued the company’s woes are due to a flawed program, while supporters of renewable fuel laws have said the refiner’s troubles stem largely from a lack of access to relatively cheap crude oil supplies.

“Blaming the RFS is a better story than admitting strategic mistakes related to crude oil markets. But it’s a smokescreen,” said Brooke Coleman, executive director at the Advanced Biofuels Business Council. “Jobs matter, but the RFS is simply not the issue at PES.”

In 2017, refiners including Valero Energy Corp (VLO.N) and CVR Refining (CVRR.N), through the latter’s majority owner Carl Icahn, tried to get the Trump Administration to shift the cost obligation for the credits down the supply chain to blenders like Shell or gas station operators like Wawa.

That effort failed after lobbyists representing ethanol producers intervened, but the battle may now be revived.

“The mechanism for enforcing the RFS is the primary cause for this bankruptcy filing and it must be fixed,” said Pennsylvania’s Republican Senator Pat Toomey in a statement.

The bankruptcy comes six years after private equity firm Carlyle Group LP (CG.O) and Energy Transfer Partners’ (ETP.N) Sunoco Inc rescued PES from financial distress, in a deal supported by tax breaks and grants that saved thousands of jobs.

Shortly after the sale, Carlyle Group issued the controversial \$550 million term loan, with the bulk of the proceeds going to investors in the form of dividend-style payouts.

## **Madison.com**

[http://host.madison.com/news/local/govt-and-politics/wisconsin-tribe-sues-federal-government-over-aquila-mine-in-michigan/article\\_13402fe2-fdda-5d1a-8c9a-aa7a64125542.html](http://host.madison.com/news/local/govt-and-politics/wisconsin-tribe-sues-federal-government-over-aquila-mine-in-michigan/article_13402fe2-fdda-5d1a-8c9a-aa7a64125542.html)

### **Wisconsin tribe sues federal government over Aquila mine in Michigan's UP**

By Steven Verburg, 1/23/18

The Menominee Indian Tribe of Wisconsin on Monday sued two federal agencies over their handling of a massive mine proposed on land just over the state line in Michigan’s Upper Peninsula.

The tribe says the federal government has deprived it of treaty rights that are supposed to protect its cultural and historical sites and that the case may prove to have national significance.

The federal government has delegated to the state of Michigan extra authority for protecting wetlands and waterways like those on the mine site, which is 150 feet from the Menominee River.

The Keshena-based tribe said the Environmental Protection Agency and the Army Corps of Engineers should take control. That would give the tribe a much greater role in setting terms for how the river, adjacent wetlands and tribal burial grounds would be protected.

Toronto-based Aquila Resources wants to extract gold, zinc and other metals from an open pit mine. The elected boards and councils of at least six counties and four municipalities oppose the Aquila's Back Forty project.

In November, the tribe filed notice that it planned to sue, but the EPA declined to discuss the dispute, citing agency administrator Scott Pruitt's directive to avoid settling environmental lawsuits, said the tribe's attorney, Janette Brimmer. Later the EPA hinted that some very limited talks could occur, but that never happened, Brimmer said. The Army Corps sent a short letter saying authority would remain with Michigan, she said.

The two agencies didn't respond to requests for comment. Michigan has offered to involve the tribe in permitting, but only under federal law would the Menominee have a formal, enforceable channel to influence decisions.

Tribal chairman Gary Besaw has said Pruitt's desire to give more authority to states could lead to more disputes like this one.

Brimmer said the wetlands along the Menominee River should be regulated by the federal government because the river is a commercially navigable interstate waterway.

Opponents say a mine could drain acid into the river, a fishing destination that empties into Lake Michigan's Green Bay. Dozens of ancient effigy mounds, ceremonial fire rings and raised community gardens have been mapped on or around the mine site. The mine would unearth tons of sulfide rock, which reacts with air and water to create acid.

The Army Corps is involved in permitting disturbances of wetlands and waterways, while the EPA administers water and air quality.

## Reuters

<https://www.reuters.com/article/china-gmo-rice/u-s-gives-safety-approval-to-chinese-genetically-modified-rice-strain-idUSL4N1PI2PY>

### U.S. gives safety approval to Chinese genetically modified rice strain

1/23/18, 5:46 AM

BEIJING, Jan 23 (Reuters) - A rice genetically modified (GMO) by Chinese researchers to resist pests has passed safety inspections by authorities in the United States, allowing for its sale there even though Beijing continues to prohibit planting of any GMO food grain.

The rice, known as Huahui 1, was developed by a team at Huazhong University in central Hubei province to resist pests like the rice stem borer. While Chinese authorities granted the strain a safety certificate in 2009, it has never been approved for commercial production.

Beijing has spent billions of dollars researching GMO crops but has held back from commercial production of any food grains because of consumer concerns about their safety. Validation of the country's GMO safety testing and products by U.S. authorities could help persuade the government and consumers in China to accept the products at home.

The U.S. Food and Drug Administration (FDA) notified the research team at Huazhong last week that it agreed with university's safety and nutritional assessments on the product, Huazhong said in a statement on Sunday on its website.

"Genetically engineered Huahui No.1 rice grain does not raise issues that would require premarket review or approval by FDA," according to a letter posted on the FDA website that Huazhong highlighted in its statement.

The product had earlier passed a review by the Environmental Protection Agency on pesticide residue levels, Huazhong said,



clearing the way for the export of Huahui 1 rice and rice products to the U.S. market.

However, the university would need further approval from the U.S. Department of Agriculture for planting the rice. The statement did not say if researchers would seek such approval.

But Huazhong said the approvals from the FDA and EPA further validated the test methods and evaluation carried out by Chinese institutes to assess safety and nutrient levels in the new rice.

China has said it aims to push forward the commercialization of GMO corn and soybeans by 2020 but has not made public any plans to approve planting of GMO rice, the country's most important staple food. (Reporting by Dominique Patton; Editing by Christian Schmollinger)

## **BNA**

[http://esweb.bna.com/eslw/display/no\\_alpha.adp?mode=si&frag\\_id=127270098&item=408&prod=deln&cat=AGENCY](http://esweb.bna.com/eslw/display/no_alpha.adp?mode=si&frag_id=127270098&item=408&prod=deln&cat=AGENCY)

### **Floored by Fluorochemicals: Locals Going Lower Than EPA's Level**

By Sylvia Carignan, 1/23/18

Fear and uncertainty are driving some towns to completely eliminate a ubiquitous chemical from their drinking water, even though the EPA says small amounts are safe.

Towns and state governments are asking whether the Environmental Protection Agency's limit for exposure to poly- and perfluoroalkyl substances, also known as PFAS, is too high. Instead of relying on federal guidance, some towns are trying to remove as much as possible of the chemicals from their drinking water, and states are developing stricter limits.

The EPA determined in 2016 that in drinking water, a person can be safely exposed to perfluorooctanesulfonic acid (PFOS) and perfluorooctanoic acid (PFOA), two chemicals in the PFAS family, at a concentration of up to 70 parts per trillion during their lifetime.

"The decision by [municipalities] and their customers as to whether to accept this advice is a very local one," Howard Neukrug, former commissioner and chief executive officer of Philadelphia Water, told Bloomberg Environment.

The extent of the health effects of these chemicals is still unclear, but they may cause high cholesterol, thyroid problems, and testicular and kidney cancers, according to the Centers for Disease Control and Prevention.

Some states also are considering whether the EPA's 70 parts per trillion exposure level is too high and setting their own limits below that.

## **Military Sources**

Horsham, Pa., found PFAS in every one of its 14 wells after the EPA asked water utilities to start testing for the chemicals in 2013.

"Maybe 70 [parts per trillion] is protective enough, but we haven't been able to get a definitive answer to that question," Tina O'Rourke, business manager at Horsham Water and Sewer Authority, told Bloomberg Environment. "We felt we had a responsibility to do better."

Horsham and its neighbors, Warminster and Warrington, border properties owned by the Navy and Air National Guard.

The military has taken responsibility for the area's PFAS contamination. The chemicals are believed to come from the military's use of aqueous film-forming foam, which was widely used to put out fires on aircraft and ships. Once the foam is sprayed onto a training ground, airfield, or accident site, it has the potential to seep into soil and groundwater.

## **Testing Limits**

Horsham is aiming for "non-detect" concentrations of PFAS in its drinking water supply, an amount low enough that tests cannot find the chemicals.

The EPA's lifetime limit may be too high to be safe, O'Rourke said, because the township is uncertain how long PFAS has been in its

drinking water or how long its residents have been exposed.

“Despite the best levels of scientific understanding, some communities don't trust the results of health exposure studies,” Neukrug said.

Anaheim, Calif., found PFOA and PFOS in its water supply, but is following the EPA's guideline of 70 parts per trillion, “which, for the benefit of everyone, is extremely stringent,” Mike Lyster, spokesman for the city, told Bloomberg Environment.

States’ drinking water limits for PFOS and PFOA vary, though all are under the EPA's 70 parts per trillion limit. Some are now revising their limits, making them more stringent.

“That's probably a trend that will continue,” David Flannery, senior global market segment manager at Cabot Corp., told Bloomberg Environment. Cabot, a specialty chemicals and performance materials company, has developed an activated carbon technology to remove PFAS from drinking water.

The Association of State Drinking Water Administrators wrote to the EPA and Centers for Disease Control and Prevention Jan. 12 about inconsistent PFAS limits.

The EPA has not yet developed a single, enforceable limit for PFAS in drinking water. According to the agency, it's collecting data and conducting analyses required under the Safe Drinking Water Act to evaluate PFOA and PFOS. Drinking water limits often are used as cleanup targets at Superfund and other waste sites the EPA oversees.

“We're concerned that several sets of differing risk numbers will be communicated from each agency, which will cause confusion, delay, or worse, no action at all,” the association wrote.

According to Alan Roberson, a spokesman for the Association of State Drinking Water Administrators, they have not received a response from the EPA or CDC.

## **Treating Water**

“There are technologies available now that can treat many of the PFAS compounds down to non-detect,” David Woodward, vice president and PFAS technical leader at Wood Plc, doing business as Amec Foster Wheeler, told Bloomberg Environment.

Developing those technologies also can test their long-term use as more municipalities install permanent remedies for their water supplies, Woodward said.

Calgon Carbon Corp. installed permanent PFAS removal filters on two of Horsham's contaminated wells.

In addition to installing filtering systems, Horsham is shutting down wells and buying water from other towns, even though the concentration of PFAS in the township's drinking water falls below EPA limit. By blending drinking water sources, the town estimates that its PFOS and PFOA levels are about 4 parts per trillion.

“There have been a few instances so far where municipalities have been very close to the [EPA's] health advisory goal and then go ahead and decide to implement the [PFAS removal] technology,” Ralph Franco, director of municipal products for Calgon Carbon, told Bloomberg Environment.

“I would say that's more of an exception than a rule,” he said.

## **State Standards**

Like the EPA, Vermont's limit is based on a combined measure of PFOS and PFOA. But instead of setting it at 70 parts per trillion, the state set a limit at 20 parts per trillion.

Sarah Vose, toxicologist at the Vermont Department of Health, said the state's limit differs because unlike the EPA, Vermont considered the potential health effects of the chemicals for children under one year old. That's a standard consideration when Vermont reviews drinking water contaminants, she told Bloomberg Environment.

New Jersey is proposing a maximum limit of 14 parts per trillion for PFOA in drinking water. The state is revising its acceptable level down from 40 parts per trillion, which it set in 2007.

“A large body of relevant health effects information from both human and animal studies has become available since it was developed,” the New Jersey Department of Environmental Protection said in a memo last October.

New Jersey also proposing a maximum limit of 13 parts per trillion for PFOS in drinking water. Like Vermont, the state considered infants who may be exposed to PFOS when drafting its limit, according to the New Jersey Drinking Water Quality Institute.

The differences in state standards “demonstrate the difficulty in calculating health risk goals and determining risk reductions without federal standards, and are creating public confusion about what levels of PFAS are safe in drinking water,” the association wrote.

Pennsylvania is choosing to follow the EPA's health advisory for drinking water while it considers whether to set a state limit, Neil Shader, spokesman for the Pennsylvania Department of Environmental Protection, told Bloomberg Environment.

Pennsylvania, like the association, is encouraging the EPA to provide more support to states and take the lead on PFAS limits.

### **Montana Standard**

[http://mtstandard.com/news/local/shutdown-won-t-delay-epa-visit-announcement/article\\_5985d154-54d8-57b3-8732-aad1f8421fe8.html](http://mtstandard.com/news/local/shutdown-won-t-delay-epa-visit-announcement/article_5985d154-54d8-57b3-8732-aad1f8421fe8.html)

#### **Shutdown won't delay EPA visit, announcement**

By Susan Dunlap, 1/23/18

The temporary government shutdown won't delay the impending critical decision about the Butte Hill cleanup that Environmental Protection Agency Regional Administrator Doug Benevento is expected to announce Friday.

Andrew Mutter, director of Denver EPA's Office of Communication and Public Involvement, said Monday that Benevento is visiting Butte "as originally planned." The Senate voted 81-18 Monday to end the shutdown.

Benevento will hold a public meeting from 12 to 2 p.m. Friday at the Butte Public Archives, 17 W. Quartz St., to announce the decision.

While Atlantic Richfield, the primary responsible party, has done much work since EPA declared Butte and Silver Bow Creek a Superfund site in the 1980s, much is left to do. Questions remain concerning the historic mining and smelting waste along the Parrot corridor, from Texas Avenue to George Street. There is also the Slag Wall Canyon, vegetative caps on the Butte Hill that need to be redone or were never done and Buffalo Gulch at South Montana Street, which some critics think is likely a source of metals getting into the creek.

When Benevento visited Butte last November, he said he hoped to announce a final agreement with all the agencies and responsible parties on the Butte Hill. If EPA is successful with the agreement by Friday, then Butte will learn at some point if all of those issues are being addressed.

The confidential negotiations for that agreement have been ongoing for 12 years.

If EPA and all the other parties involved cannot agree to the legal agreement “in principle” by Friday, then EPA is expected to order Atlantic Richfield Company, the primary responsible party, to do more work.

The last time EPA ordered Atlantic Richfield was in 2011 and not all of that work has been completed.

### **BNA**

[http://esweb.bna.com/eslw/display/no\\_alpha.adp?mode=si&frag\\_id=127270107&item=408&prod=deln&cat=AGENCY](http://esweb.bna.com/eslw/display/no_alpha.adp?mode=si&frag_id=127270107&item=408&prod=deln&cat=AGENCY)

#### **Texas Area Gets Extension as EPA Makes Ozone Designations**

By Jennifer Lu, 1/23/18

The Environmental Protection Agency said [it needed until Aug. 10](#) to decide the status of eight areas in Texas that make up the San Antonio area.

The extension was granted because the state might have extra information to submit, according to [a statement](#) filed by EPA Assistant Administrator William Wehrum in a parallel court case on delayed ozone implementation in the U.S. District Court for the Northern District of California.

The agency announced this date Jan. 19 after the agency was ordered by the U.S. Court of Appeals for the District of Columbia Circuit in December to set a firm deadline for identifying ozone problem areas.

Those determinations—known as nonattainment designations—were due Oct. 1, 2017, two years after the agency had set the 2015 ozone standards at 70 parts per billion. Without completed designations, regions with ozone problems can't begin work on plans to control pollution, including emissions limits for vehicles and permitted industries.

### State Reversed Recommendation

In its [designation recommendation](#) to the EPA, Texas originally said that Bexar County, part of the San Antonio area, should be in nonattainment of the 2015 eight-hour ozone standard.

But the state reversed its recommendation in [a follow up letter](#), saying that a nonattainment designation would impose an economic burden on San Antonio.

Ground-level ozone is formed when air pollution—primarily from burning fossil fuels—reacts in the presence of sunlight. Ozone inhalation can cause muscles in the airways to constrict, leading to respiratory problems.

More than 107 million people live in areas where ozone pollution exceeds federal standards, [according to the EPA](#).

After missing the deadline to complete the reviews, the agency announced in November which areas of the country met the 2015 standards, but not the areas that didn't.

The American Lung Association and Sierra Club have sued the EPA for missing its deadline to complete the designations process.

The Sierra Club has received funding from Bloomberg Philanthropies, the charitable organization founded by Michael Bloomberg, the ultimate owner of Bloomberg Environment.

### E&E Daily

<https://www.eenews.net/eedaily/stories/1060071641/search?keyword=EPA>

### Cramer revives bill to boost carbon capture

By Maxine Joselow, 1/23/18

North Dakota Republican Rep. Kevin Cramer, an early energy adviser to President Trump, reintroduced legislation last week to boost carbon capture and sequestration projects through the tax code.

Supporters of the bill, H.R. 4857, the "CO2 Regulatory Certainty Act," say it would better align tax guidelines with U.S. EPA regulations related to CCS.

GOP Reps. Sam Johnson of Texas, David McKinley of West Virginia, and Gregg Harper and Steven Palazzo of Mississippi are co-sponsoring the legislation.

Sen. John Hoeven (R-N.D.) introduced companion legislation in the Senate last August (E&E Daily, Aug. 3, 2017). Cramer previously introduced a similar measure, H.R. 2010, last April.

Backers say current IRS guidelines don't clearly distinguish between companies pumping trapped CO2 into wells as opposed to deep geological formations. This tax code issue, they say, could prevent some CCS developers from applying for a credit known as

"This straightforward bill aligns EPA and IRS regulations as they relate to the existing carbon sequestration tax credit," Cramer said in a statement last year.

"Under the Obama Administration, IRS guidelines were set over and above even the EPA's requirements for enhanced oil and gas projects," he said.

"This is one small way to help President Trump rebalance the previous Administration's insistence on picking winners and losers in energy markets at the expense of consumers and job producers."

Some environmentalists say the legislation is unnecessary and could weaken CO2 monitoring.

Cramer, a former utility regulator, has a mixed track record when it comes to climate policy. On one hand, he has downplayed the role of humans in global warming, opposed the Clean Power Plan and cheered the Trump administration's rollback of energy regulations.

On the other hand, he has offered some support for a small carbon tax and opposed Trump's decision to withdraw the U.S. from the Paris climate accord (E&E Daily, Sept. 26, 2017).

When Cramer announced earlier this month that he wouldn't run for Senate, some environmentalists cheered the move, saying it bolstered the re-election campaign of Sen. Heidi Heitkamp, a moderate Democrat they view as preferable to a Republican (Climatewire, Jan. 12).

Pending tax legislation to address a number of breaks includes language from Heitkamp along with Sens. Shelley Moore Capito (R-W.Va.), John Barrasso (R-Wyo.) and Sheldon Whitehouse (D-R.I.) to boost existing credits for storage of captured CO2 (E&E Daily, Dec. 21, 2017).

## **E&E Daily**

<https://www.eenews.net/eedaily/stories/1060071643/search?keyword=EPA>

### **Not an earmark, but is it pork? Critics slam Miss. project**

By Ariel Wittenberg, 1/23/18

Critics of a decades-old Mississippi flood control plan say the ongoing debate over whether Congress should bring back earmarks could be moot if lawmakers push the project in fiscal 2018 spending legislation.

At issue is a provision in the Senate fiscal 2018 spending bill for U.S. EPA and the Interior Department "directing immediate construction" of the Yazoo Backwater Area Pumps Project, a flood control initiative rejected by the George W. Bush administration.

After being presumed dead, the legislation would revive the proposal, raising questions about the appropriateness of using a spending bill for such a goal.

Backers say a \$220 million massive pumping station on a Mississippi River levee would help protect more than 1,000 homes, businesses and farms from flooding caused by periodic high water in the Yazoo River Basin.

The Army Corps of Engineers, with Congress' backing, pushed for the idea for years despite acknowledging that 67,000 acres of high-value wetlands could be drained as a result.

Opponents argue that the environmental damage is much greater, and EPA estimated in 2008 that more than 200,000 acres of wetlands could be harmed.

Moreover, critics call the project a boondoggle that, rather than protecting homes from flooding, would expand production areas for fewer than 100 farms that already receive heavy farm subsidies from the federal government.

In 2004, Sen. John McCain (R-Ariz.) famously called the project "one of the worst projects ever conceived by Congress."

After EPA vetoed Yazoo Pumps in 2008 under Section 404(c) of the Clean Water Act because of environmental worries, a decision upheld by the 5th U.S. Circuit Court of Appeals in 2012, many opponents thought the plan was dead.

But Senate Appropriations Chairman Thad Cochran (R-Miss.) is looking to resurrect it. By inserting the rider into the spending bill, it became part of negotiations for an omnibus package for the rest of fiscal 2018.

The language does not technically meet Congress' definition of an earmark because it doesn't include a dollar amount of funding for Yazoo Pumps. But critics say it's the closest lawmakers have come to earmarking since banning the practice in recent years.

"This is pork," said Melissa Samet, senior water resources counsel for the National Wildlife Federation.

Directing the Army Corps to immediately begin construction on Yazoo Pumps would be a break from how Congress has funded water infrastructure projects for the past eight years.

Under that workaround, Congress can appropriate money for projects requested by the president in a budget proposal.

Congress typically also offers additional money for projects that fit into different categories like flood control and navigation.

That cash can be used for plans already authorized by Congress but not requested by the president, with the Army Corps using a benefit-cost-ratio analysis to prioritize projects.

To comply with Cochran's language, the Army Corps would almost certainly have to withdraw money from its flood control fund, potentially pulling resources from other needs.

"I think it would in fact take money away from that flood control pot of money," said Steven Stockton, a former director of civil works for the Army Corps who now works at Washington, D.C., consulting firm Dawson & Associates.

To Steve Ellis, vice president of the group Taxpayers for Common Sense, taking money away from other authorized projects makes the language a "de facto earmark."

"It is going to cost money, and if they are supposed to immediately turn to building the project, it is a de facto earmark even if it isn't technically one under the rules," he said.

"It doesn't look good that you've got the chairman of the Appropriations Committee basically forcing his project to the front of the line when it was already killed by a Republican administration," he said.

"Some people out in the country like to call this pork-barrel and talk about projects as if they are somebody's pet project or pet program," he said. "This MRT program and other infrastructure that we have all around the country is just vital."

Asked specifically about Yazoo project later, Wicker said, "I'm committed to it, if that's what you're wondering."

The senator said he supports the appropriations language and that it is not an earmark because "it is part of a long-standing project."

An Appropriations Committee Republican aide agreed, stressing the lack of a dollar amount and previous authorization.

It's not clear why Cochran is choosing to resurrect the project now, though President Trump's nominee to lead the Army Corps, R.D. James, has expressed support as a member of the Mississippi River Commission, according to the Delta FarmPress.

This is not the first time Cochran has stepped up to defend Yazoo Pumps. The project was almost killed in 1986 when Congress required its local sponsors to share 25 percent of the costs.

A decade later, Cochran and then-Sen. Trent Lott (R-Miss.) exempted Yazoo from the cost-share requirements as part of a water resources development bill.

### **Set precedent?**

Critics fear that this time, Cochran's language could set a precedent for lawmakers trying to press controversial water infrastructure

proposals.

Olivia Dorothy, associate director of Mississippi River management for the nonprofit American Rivers, said that "this would definitely open the door for any other projects that had been vetoed under the Clean Water Act to be overturned."

The National Wildlife Federation's Samet agreed. "If this goes through, if they let this happen, it means any project, no matter how devastating, will go through," she said.

"The George W. Bush administration did not have a strong environmental record, and even they said that this is egregious and we cannot let it go through," Samet said.

Both Dorothy and Stockton said the provision likely would be challenged in court for potentially violating the separation of powers clause of the Constitution.

But lawmakers could use similar strategies to push less controversial pet projects to the head of the line, Ellis said.

"If, all of a sudden, you just had this provision in there saying you have to move forward on this project or that project, it makes a mockery of the [earmark] moratorium," he said.

Ellis argued that the language weakens Republican arguments that a limited revival for earmarks just on transportation and infrastructure would be particularly helpful and innocuous.

"People like to think that water projects aren't subject to the same abuses, but they are the original pork barrel, and this is a prime example of that," Ellis said.

While some in Congress have argued that earmarks could help grease the wheels and help members forge compromises, Ellis points out Congress has often been sluggish on certain topics, including water resources authorization bills.

"People talk about earmarks as being this magic pixie dust that makes the system go," he said. "But we had a [water resources authorization] in 2000 and then not another until 2007 and then one in 2014 and 2016, so in the moratorium era, that process has worked better than it did during the go-go years of earmarks."